GOVERNMENT OF KARNATAKA

SOCIAL WELFARE AND LABOUR DEPARTMENT

Labour Dispute.—Industrial Dispute between the workmen and the management of K.S.R.T.C. (B.T.S. Dn.)), Bangalore-27.

Award of the Presiding Officer, Labour Court, Bangalore, Published.

Read the following Papers :

(1) Letter No. 413/75-76, dated 24th June 1957, from Sri P. Srinivasacharya, Presiding Officer, Labour Court, Bangalore.

BEFORE THE PRESIDING OFFICER, LABOUR COURT, BANGALORE.

Dated 24th day of June 1975

Present :

Shri P. Srinivasacharya, B.A., LL.B.,
Presiding Officer

Reference No. 14 of 1973

First Party.—S. R. Kulkarni, S/o Rudraiah, No. 76, Kanakanapalya, II Block, Jayanagar, Bangalore-11.

vs.

Second Party.—The Management of Mysore State Road Transport Corporation (B.T.S. Division), Bangalore-27.

Reference.—Government Order No. FCL 1616 LLD 72, dated 29th January 1973.

AWARD

1. The Government of Mysore (now Government of Karnataka) in their order No. FCL 1616 LLD 72 dated 29th January 1973 have referred an industrial dispute existing between the above named parties to this Court for adjudication on the points of dispute noted below :—

"Is the management of M.S.R.T.C. Bangalore-27 (B.T.S. Division) justified in dismissing S. R. Kulkarni, Ex-Helper 'A' of B.T.S. Division with effect from 31st July/1st August 1969 ?

If not, to what relief the workman is entitled ?"

2. The first party filed his claim statement on 17th July 1973 saying that he was working in the II Party as Helper 'A' in Depot No. II of the Workshop attached to B.T.S., and had put in 5 years of unblemished service; his duty was to repair the self-mechanism in the motor vehicles of the corporation; though he was designated as helper he was doing the above work independently; on the night of 15th/16th November 1968 he was as usual attending to his work; at about 2 A.M. one Narayana, Art. 'A', tried to put pressure on him to do his work of fitting the battery which had been assigned to Narayana by Depot Night Shift Incharge, Sri Murugesh; as he was engaged in his usual work first party protested; then Narayana without provocation started abusing him and attacked him; When I Party asked Narayana to accompany him to the Night Shift Incharge to report about the arrogant behaviour of Narayana and to loosen his hold on him he bit him on the arm causing bleeding wound; Watchman P. Raman pulled away the attacke Narayana; the first party workman, Kulkarni, got treatment in E.S.I. Hospital on 16th November 1968 and lodged a complaint with the Depot Manager. Though he was a victim of the high-handed behaviour of Narayana who thought that he could do anything to the junior workman, the management without considering who the aggressor was held a fare of an enquiry regarding the incident on 25th March 1969 and dismissed I Party by order of discharge; the charges made against him were that while he being on duty in the night shift on 15th/16th November 1968 disobeyed the instructions of his official superior Sri Narayana and thereby he has been insubordinate and in defiance of the instructions he wilfully flared up and hence he has been unruly and rude in his behaviour towards his superior and thirdly wilfully assaulted him and fourthly by his alleged acts he had caused loss of man hours; the I Party submits that Sri Narayana was not his superior official and I Party was not his subordinate and hence the question of Narayana giving orders or instructions to Kulkarni and his disobeying any lawful order does not arise; the findings of the management that Narayana was superior official of Kulkarni is unsustainable and perverse; Sri Narayana was also chargesheeted and was also dismissed; on a perusal of the order passed by the General Manager dated 24th February 1970 on the appeal filed by Narayana it is clearly stated that Narayana picked up a quarrel with Kulkarni, assaulted him and went to the extent of biting his arm and had indicated that Kulkarni made the first report; in the face of these facts, the findings of the enquiry officer that the first party workman is guilty of assault on Narayana, riotous and disorderly behaviour during working hours etc., make a strange reading; the order of discharge is absolutely unject, illegal and contrary to the Standing Orders; there was no fair and proper

enquiry; the charge of misconduct has not been proved by satisfactory evidence; the findings of the enquiry officer was opposed to facts; it is further submitted that while I Party was discharged the aggressor Sri Narayana was taken back to work subsequently and he is working in MSRTC; even at the time of enquiry though both of them had been ordered to be kept under suspension pending enquisy, the order of suspension against Narayana was revoked after sometime and he continued to work; hence the discharge of I Party workman is unjust, illegal and malafide and he is entitled to be reinstated with continuity of his services and back wages.

3. The second party management filed its objections saying that the contention of the I Party that he has an unblemish record of service is not correct; the first party was not discharging any independent work; the contention of the I Party about the incident on the night shift of 15–16th November 1968 ws not correct; Narayana submitted a written complaint to Depot Manager concerned stating that Vehicle No. 641 was under repairs for certain defects which work was entrusted to him when he was repairing the Headlights of the said vehicle the first party Kulkarni, was fitting self-starter to the vehicle and while doing so he dislocated the wires attached to the battery etc..; Narayana never at any time started abusing the first party workman and attacked him; the statement that Nasayana bit him on the arm of the first party causing bleeding wound is not correct and false; it is true to say that Narayana caused some injuries on the first party only in self-defence but not as an attack or aggression; it is not denied that M/s. Kulkarni and Narayanaa got treatment in ESI hospital on 16th November 1968; it is only first party was responsible for the incident; the management conducted a departmental enquiry and found him guilty of the charges; the first party was discharged from services only after a detailed enquiry giving him all reasonable and proper opportunity; Sri Narayana was immediate official superior of I Party and therefore his contention that he was not subordinate to Narayana was unsustainable; it is true that Narayana was charge-sheeted and discharged; his contention that enquiry officer should have properly appreciated the facts is not fair and proper; all the aspects of the matter were considered and decision was taken; the management proposed during the course of conciliation to give fresh appointment to I Party in a division other than BTS, to which I Party did not agree; the other contentions were denied; hence the claim of the first party be rejected..

4. The following issues have been framed:—

1. Whether 2nd party proves that it was justified in dismissing 1st party with effect from 31st July/1st August 1969;
2. To what relief 1st party is entitled?

5. On behalf of the II Party three witnesses, namely, M/s. Narayana, P. Murghesa and B. P. Ramaiah, have been examined as M.W. 1, M.W. 2 and M.W. 3 respectively. On behalf of the I Party, I Party workman got himself examined as W.W. 1.

Issue No. 1:—

6. The I Party workman in his evidence has stated that he was working in BTS Division as Helper 'A' and his job was to fit self-starter to all the vehicles; he was doing this job independently and not under anybody's direction; one Mr. Murughesh, incharge of the depot, used to allot him the work; he knows Narayana (M.W. 1) who was working as Artisan-A, whose job was to fit the batteries and lookafter headlights; On 15–16th November 1968 Narayana (M.W.1) came to him where he was working at 2 A.M. and asked him to fit a battery to one of the vehicles. to which he replied that he was attending to his own job of fitting self-starter and M.W. 1 can look-after his own job; then M.W. 1 said that he was the incharge and first party has to obey his orders; he told M.W. 1 that it was Murugesh who was incharge of the depot and M.W. 1 cannot issue commands to him; upon that M.W. 1 got wild and dragged him under the vehicle where he was actually working and bit his left arm; by that time Watchman Raman came to the spot an took Narayana and himself before Murugesh; then Narayana and himself were kept under suspension; both of them were issued charge sheets; the suspension orders against Narayana were revoked within a short period and he was taken on duty; his suspension continued; then enquiry held against both and dismissal orders were passed against both of them; once again Narayana was given an appointment, whereas for no fault of his he was dismissed; Narayana was responsible for the quarrel; the duties allotted to each workman was noted in the work order register; in the work order register it would be seen that he was allotted the work of fitting self-starter to the vehicles and not the fitting of battery; at the time of conciliations, Second Party offered appointment to him as a fresh candidate; he said that he should be given full back wages and continuity of service as he had not committed any misconduct; he prays that he be reinstated with full backwages and continuity of service. In cross-examination he has told that he was taken as Helper-B in 1964 and in 1967 promoted as Helper-A. He denied the suggestion that he had started the quarrel.

7. M.W. 1 Narayana, who was a co-worker, says that he was working as Electrician; he was given a charge sheet as per Ex.W. 1; Kulkarni had been issued with another charge sheet; common enquiry held; Ex.W. 2 is the order passed by Deputy General Manager; he was discharged from service. He had preferred an appeal which was also rejected. Then he approached the Hon'ble Minister with mercy petition; his appeal was sympathetically considered and he was

re-employed as per Ex.W. 3. There was nothing in writting to show that he was in shift-incharge. This negatives the contention of the Second Party that Narayana was superior to First Party and a duty was cast upon the First Party to obey the orders of Sri Narayana. The witness further admits that Kulkarni was working under the bus and was removing the starter; he (M.W.1) asked him (W.W. 1) whether he would fit the battery, the work which was allotted to him (M.W. 1). Upon this quarrel took place. He denied several suggestion and in particular denied the suggestion that he was fully drunk and that he picked up quarrel with Kulkarni. But it is significant to note that the General Manager of the II Party rejecting the appeal preferred by M.W. 1 *vide* his order dated 24th February 1970, has observed as follows :—

" The above contentions of the appellant cannot be accepted. The proceedings of the enquiry indicate that the first report was made by Sri Kulkarni and the Depot Manager as the Controlling Officer hand forwarded the same. It is not necessary that the Depot Manager should have been an eye witness to report the complaint against him. The incumbent has been charged for disorderly and rioutous behaviour during working hours. The evidence has established clearly that he proved the quarrel and that he assaulted Sri Kulkarni. "

Therefore, M.W. 1. Narayana's version cannot be believed.

8. It is disclosed from the evidence of M.W. 3, Ramaiah that he was the Watchman; on the night of 15th November 1968 at about 1 a.m. after midnight, Mr. Kulkarni was working lying under a bus; Narayana came and asked Kulkarni to come early; Kulkarni told that he was doing his own work and after finishing it he would come; upon that Narayana said that he (Kulkarni) was disobeying the orders of in-charge and dragged him and bit him on his arm; he (M.W. 3) rushed to the spot from the gate where he was standing, intervened and separated them. Left arm of Kulkarni was bleeding. In cross-examination he says that Narayana had no injury on his body. He asserts that Murugesh was the person who was real in-charge and Narayana was only an Artisan and co-worker. In re-examination it was sought to be made out that he does not know as between Kulkarni and Narayana who was superior and who was great. This evidence shows that it was Narayana (M.W. 1) who broke the quarrel and was an aggressor causing bodily injury to I Party workman.

9. M.W. 2, P. Murugesh is not an eye witness. His evidence is simply to the effect that he had asked Narayana to attend to his work; Kulkarni was a helper who was also doing his duty; at about 1-30 a.m. watchman Ramanna brought Kulkarni and Narayana and

said both were fighting and then he sent Kulkarni to hospital. But he did not send Narayana to hospital as he did not make any complaint. He further stated that Kulkarni was subordinate to Narayana and he had to work as per his directions. But in cross-examination he clarified the position that he was the shift incharge and he was the person who was allotting the work directly to every person and supervising their work. Therefore, Narayana cannot be taken to be superior. He further said that he was maintaining log book, but then he says that he had maintained only Work Order Sheet. He further stated that Kulkarni, though designated as a Helper, was independently removing and fitting the self starter; both Narayana and Kulkarni were subordinate to him. He was not present at the time of quarrel and he has not been examined during the domestic enquiry. He denied the suggestion that Narayana was drunk at that time.

10. Whether Narayana was superior to Kulkarni or not, the General Manager of II Party himself has observed in his order dated .... February 1970 rejecting the appeal of Kulkarni, that Narayana was a co-worker of Kulkarni. The relevant portions in the said order are quoted below:

"The appellant has been discharged from service by the Deputy General Manager, B.T.S. on charges of misconduct in as much as he picked up a quarrel with another Helper by name Sri Narayana while discharging duties on the night of 15th/16th November 1968 and assaulted him.

"Assaulting a co-worker is an act of serious misconduct"

That being so, the question of insubordination of I Party does not arise.

11. From the above evidence on record, I hold that the II Party has failed to prove that it was justified in discharging the services of the I Party workman. The evidence discloses that when I Party was engaged in his duty Narayana (M.W. 1) who provoked the quarrel and bit Kulkarni on the left arm, for which I Party workman was sent to hospital where he was treated. Subsequently a common enquiry was held and both the workmen, Narayana and Kulkarni, were discharged from service. Thereafter Narayana was taken on duty and when a dispute was raised by the I Party, II Party in conciliation offered I Party new appointment, to which I Party did not agree.

12. Under the same set of facts and circumstances, if one employee is continued in service and the other is discontinued, it certainly amounts to discrimination. It is said on behalf of the II Party that after the discharge and rejection of the appeal by the General Manager, Mr. Narayana preferred a Mercy Petition to the Hon'ble Minister and upon that he was reappointed. Whatever that might be, the fact cannot be overlooked and ignored that both I Party

workman and Mr. Narayana had been discharged from service in a common enquiry held against them on the finding that the alleged misconducts were proved against them. In this view I am supported by the observations of the Supreme Court in Northern Dooars Tea Company *vs.* Workmen of Dem Dima Tea Estate (reported in 1964 I LLJ 436 at page 441), wherein it is observed as follows:—

"So, in the opinion of the tribunal the action of the appellant in dismissing these six workmen was *mala fide* in as much as it was based on irrational and unreasonable discrimination. In our opinion, this finding cannot be successfully challenged by the appellant in the present appeal."

13. For the foregoing reasons, I hold that the II Party management was not justified in dismissing the I Party workman with effect from 31st July/1st August 1969.

14. *Issue No.* 2.—It therefore follows that the I Party workman is entitled to the relief of reinstatement and continuity of service. With regard to the back wages, it may be noted that the I Party was discharged from service from 31st July/1st August 1969, the reference was received in this Court on 30th January 1973, the I Party filed his claim statement on 17th July 1973 and the second party filed its counter-statement on 10th September 1973 the II Party alone cannot be held responsible for the delay in the proceedings. In the circumstances, I am of the opinion that 75% of the back wages would meet the ends of justice. Hence my award.

AWARD

15. The management of M.S.R.T.C. Bangalore-27 (B.T.S. Diviison) was not justified in dismissing Sri S. R. Kulkarni, Ex-Helper 'A' of B.T.S. Division with effect from 31st July/1st August 1969. The I Party workman, Sri S. R. Kulkarni, is entitled to the relief of reinstatement with continuity of service and 75% of his back wages. No costs.

P. SRINIVASACHARYA,

Presiding Officer,

Labour Court, Bangalore.

Order No. SWL 149 LLA 75, Bangaore, dated the 10th July 1975.

S. O. 2537.—

S.O. WHEREAS by State Government Order No. FCL 1616 LLD 72, dated 29th January 1973 the Industrial Dispute between the workmen and the management of K.S.R.T.C. (B.T.S.Dn.) Bangalore-27, was referred to the Labour Court, Bangalore, for adjudication.

AND, WHEREAS the Labour Court, Bangalore, has submitted to the State Government its award in respect of the said Industrial Dispute.

NOW, THEREFORE, in exercise of the powers conferred by Section 17 of the Industial disputes Act, 1947 (Central Act 14 of 1947) the Government of Karnaaka are pleased to direct the publication of the said award as above, in the *Karnataka Gazette.*

By Order and in the name of the Governor of Karnataka,

K. MYLARAPPA,

Under Secretary to Government,
Social Welfare and Labour Department.